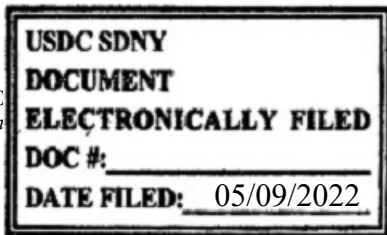




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May 6, 2022

**By ECF**

Honorable Barbara C. Moses  
United States District Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**MEMO ENDORSED**

Re: Daniel Garcia v. C.O. Thomas, et. al.,  
21 Civ. 636 (GBD) (BCM)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for Correction Officer Jason Thomas, Correction Officer Beethoven Joseph, Captain Omar Guerra, and Assistant Ward Deputy Keith Blatz. Defendants write to withdraw their Motion to Dismiss.<sup>1</sup> (Dkt. No. 43).

By way of brief background, Daniel Garcia (“Plaintiff”) brought the instant lawsuit alleging that, on December 27, 2020, Correction Officer Thomas, Correction Officer Joseph, Captain Guerra, and Assistant Ward Deputy Blatz (“Defendants”) failed to provide him medical care after Plaintiff attempted to hang himself in his cell in Rikers Island. (Dkt. No. 1). Plaintiff claims he was denied medical care before and after his suicide attempt, and that this amounted to deliberate indifference to his medical needs. (*Id.*).

In light of these allegations, Plaintiff’s medical records are at the very heart of this matter. The Court Ordered Plaintiff to produce the medical releases for the first time on September 10, 2021. (Dkt. No. 28). To that end, Defendants sent medical release forms to Plaintiff on September 13, 2021, October 6, 2021, December 1, 2021, January 26, 2022, and February 18, 2022. Having received no response from Plaintiff, our Honor subsequently ordered Plaintiff to produce the releases on January 18, 2022, and February 25, 2022. (Dkt. Nos. 38, 40).

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<sup>1</sup> Defendants reserve their right to file a new motion to dismiss for failure to prosecute should circumstances warrant.

On April 14, 2022, Defendants filed a motion to dismiss in light of Plaintiff's failure to prosecute this action. In support of their motion to dismiss, Defendants stated, *inter alia*, that Plaintiff had failed to provide necessary medical releases, and that as a result, this case should be dismissed. (Dkt. No. 43). However, on May 5, 2022, the undersigned received a completed medical release from Plaintiff dated October 5, 2022 and postmarked October 29, 2022. The release, however, was addressed to the attorney previously assigned to the case, former Assistant Corporation Counsel Robert Wennemer, and the undersigned was never provided with a copy. Nor was the executed releases ever scanned into the electronic file in this matter.<sup>2</sup>

Since Defendants' motion was premised, in large part, on not having received a fully executed medical release from Plaintiff and since a seemingly acceptable release has since been received, Defendants now withdraw their Motion to Dismiss. Of course, Defendants reserve their right to renew this motion to dismiss for failure to prosecute at a later time, if appropriate.

Thank you for your consideration of this matter.

Respectfully submitted,



Mary K. Sherwood  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: **VIA FIRST-CLASS MAIL**  
Daniel Garcia  
Book & Case No. 8252200217  
Anna M. Kross Correctional Facility  
New York City Department of Correction  
18-18 Hazen Street  
East Elmhurst, New York 11370

The motion to dismiss at Dkt. No. 43 is hereby WITHDRAWN. The Clerk of Court is respectfully directed to close the motion at Dkt. No. 43. SO ORDERED.



Barbara Moses  
United States Magistrate Judge  
May 9, 2022

<sup>2</sup> The undersigned was assigned to this case on November 8, 2022 because the attorney previously assigned to the case was leaving the Law Department.